

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

LAMONT B. SIMMONS,	)	CASE NO. 08-6263 SCR
MELISSA R. SIMMONS,	)	
on behalf of themselves and all	)	
others similarly situated,	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Roundup Funding, LLC,	)	
Malen & Associates, p.c.	)	
	)	
Defendants.	)	

DEFENDANT'S NOTICE OF MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM

To: Plaintiff and their Attorney, Shmuel Klein, Esq., 268 Route 59, Spring Valley, NY 10977

Please take notice that on the attached Affirmation of Paul W. Mahler, Esq., dated August 26, 2008, and on the motion of the Defendant, Malen & Associates, p.c. to Dismiss pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, the Defendant will move this Court for an order pursuant to Rule 12(b)(6) dismissing Plaintiff's action and for costs, disbursements and allowances.

Dated: August 26, 2008  
Westbury, New York.

Respectfully Submitted,

/s/ Paul W. Mahler  
Paul W. Mahler (pm-4186)  
Malen & Associates, p.c.  
123 Frost Street, Suite 203  
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(516) 479-5951

To: Shmuel Klein, Esq.  
268 Route 59  
Spring Valley, NY 10977